APPEAL NO. 020194
FILED MARCH 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 2, 2002. The hearing officer held that the appellant (claimant) failed to prove that he sustained an injury from an incident at work, and that the claimant did not have disability. The claimant appeals and argues that his case was proven through medical records and testimony. The respondent (carrier) asserts the decision should be affirmed.

DECISION

Reversed and rendered.

The facts are straightforward and essentially undisputed. The injury issue in this case concerned whether the claimant sustained a compensable injury on _____; no limitation is set out in the issue limiting the hearing officer's consideration of the evidence to a specific region of the body. The claimant, whose testimony was translated at the CCH, worked for an employer for whom he changed tires on trucks, stacked and unloaded tires, and did general vehicle repair work when requested. On _____, as he was loading damaged tires into a trailer, he slipped and, because it had been raining and the ground was wet, he fell backwards, striking his "back" and head. The claimant said he struck some tires and the floor, although he did not remember exactly how he made contact. He was sent to the hospital that day and was unable to work after that date. Although he had one other doctor's appointment in addition to his emergency room (ER) treatment, the claimant testified that he had been denied further treatment by the carrier.

At the ER, x-rays were taken. Mild scoliosis was shown in the lumbar spine but it was unremarkable for alignment or fractures. X-rays of the thoracic spine showed several compression fractures with associated degenerative changes, which implied a chronic process. At his one doctor's appointment thereafter, the compression fractures were noted, as well as morbid obesity and diabetes. On examination, the claimant had tenderness at multiple levels of his thoracic spine and he was referred to an orthopedic surgeon for further evaluation. The treating doctor stated that the claimant was unable to work until cleared by the surgeon.

The claimant testified he had missed no work prior to this except for ordinary diseases of life. He had no prior back injuries and no proof was offered to the contrary. The claimant had a prior knee injury a few years before. He said that he could not return to work and still had pain.

In response to a question on cross-examination asking whether his low back hurt, he stated that it did. The following statement was then made:

Q: Okay. So it's the low back that is injured then? That is what we're talking about today, for purposes of that.

A: Yes, this part right here.

No one clarified for the record to what part of his back the claimant pointed. Although the broad issue of whether the claimant sustained "an injury" was the matter being offered for consideration, the carrier's closing argument instead emphasized that there was "no evidence" that the claimant sustained a "low back injury" and argued that the hearing officer could not therefore consider the evidence of thoracic compression fractures, which were, in any case, preexisting.

The basis upon which the injury was disputed, as reflected in the carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), was that the medical evidence showed a "pre-existing condition with no acute trauma" and that the claimant's current complaints were not directly related to the on-the-job incident, and further went on to assert that any medical or disability issues were related "to a pre-existing condition." Whether or not stated as such, the carrier asserted a "sole cause" defense, arguing that any inability to work related back to the ostensible "pre-existing condition."

In light of the emphasis placed by the hearing officer on what was shown by "the medical," it is worth stating that medical evidence is not required to prove the existence of a back injury, and the fact that an objective test shows no injury to the bony structure of the spine is not dispositive of whether there is "an injury" to the back. An injury to the back may be established by testimony alone. It has been held that strains, sprains, wrenches, and twists that arise out of employment, even where an employee is predisposed to such injury, are compensable. Hanover Insurance Company v. Johnson, 397 S.W.2d 904 (Tex. Civ. App.-Waco 1965, writ ref'd n.r.e.). Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984). The site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury, and the full consequences of the original injury, together with the effects of its treatment, upon the health and body of the worker are to be considered. Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524 (Tex. 1975).

It is axiomatic, in case law having to do with aggravation, that the employer accepts the employee as he is when he enters employment. Gill v. Transamerica Insurance Company, 417 S.W.2d 720, 723 (Tex. Civ. App.- Dallas 1967, no writ). An incident may indeed cause injury where there is preexisting infirmity where no injury might result in a sound employee, and a predisposing bodily infirmity will not preclude compensation. Sowell v. Travelers Insurance Company, 374 S.W.2d 412 (Tex. 1963). However, the compensable injury includes these enhanced effects, and, unless a first condition is one for which compensation is payable under the 1989 Act, a subsequent carrier's liability is not reduced by reason of the prior condition. St. Paul Fire & Marine Insurance Company

v. Murphree, 357 S.W.2d 744 (Tex. 1962). If the prior condition is compensable, the appropriate reduction for a prior compensable injury must be allowed through contribution determined in accordance with Section 408.084.

The Appeals Panel will set aside a decision of the hearing officer only if it is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). This is such a case. In an undisputed incident at work, the claimant fell and had pain and inability to work thereafter. The incident is not refuted. A certain amount of common experience corroborates the likelihood of injury from the mechanics thereof. The sparse medical, perhaps the result of the claimant being denied further medical treatment after the dispute, corroborates complaints of pain in the thoracic spine as well as objective evidence of compression fractures. The hearing officer acknowledged that the incident may likely have aggravated any preexisting condition in the claimant's back, apparently with reference to the compression fractures; however, she then rejected his claim because his complaints of pain were in the lumbar spine. As part of this analysis, she said that he complained of only low back pain at the CCH and "in medical." To the extent that the medical evidence in the record noted back pain in examinations, however, it is in the thoracic spine. There is no factual foundation for the only articulated basis in the decision for rejecting an unbroken sequence of events from a work-related incident to an injury. The hearing officer nowhere indicates in her decision that she believed that the claimant was not credible. Nor has the carrier in this case met the burden of proof that the "sole cause" of inability to work resulted from a previously asymptomatic "pre-existing" condition.

Because there is no more than a mere scintilla of evidence against the claimant's compensable injury in this case, we reverse and render the decision that the claimant sustained a compensable injury on _____. Because the hearing officer found as fact that the claimant was unable to work from _____, through the date of the CCH due to the alleged injury, we render the further decision that the claimant had disability from his compensable injury from _____, through the date of the CCH. The carrier is ordered to provide medical benefits and pay temporary income benefits in accordance with the 1989 Act and rules of the Texas Workers' Compensation Commission, together with any accrued interest thereon.

The true corporate name of the insurance carrier is **GENERAL ACCIDENT INSURANCE COMPANY** and the name and address of its registered agent for service of process is

C.J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75206.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Terri Kay Oliver
Appeals Judge